

Magistrate Judge Charles H. Weigle recommends granting Respondent Walter Berry's motion to dismiss (Doc. 12) and denying Petitioner Mark Davis' "motion to secure a substantive defects" (Doc. 11). Doc. 14. The Magistrate Judge recommends granting the Respondent's motion to dismiss the Petitioner's application for writ of habeas corpus pursuant to 28 U.S.C. § 2254 because the Petitioner has not obtained authorization from the court of appeals as required by 28 U.S.C. § 2244(b)(3), and this Court is thus without jurisdiction to entertain the Petitioner's claims. *Id.* at 1. The Magistrate Judge further recommends denying a certificate of appealability. *Id.* at 2. The Petitioner has not objected to the Recommendation. The Court has reviewed the Recommendation (Doc. 14) and accepts and adopts the findings, conclusions, and recommendations of the Magistrate Judge. The Recommendation (Doc. 14) is **ADOPTED** and made the order of this Court. Accordingly, the Respondent's motion to dismiss (Doc. 12) is **GRANTED**, and the petition (Doc. 1) is **DISMISSED without prejudice**. Additionally, the Petitioner's "motion to secure a substantive defects" (Doc.

11) is **DENIED**. A certificate of appealability is **DENIED** for the reasons stated in the Recommendation. Additionally, because there are no non-frivolous issues to raise on appeal, an appeal would not be taken in good faith. See 28 U.S.C. § 1915(a)(3). Accordingly, any motion to proceed *in forma pauperis* on appeal is **DENIED**.

SO ORDERED, this 3rd day of June, 2019.

S/ Marc T. Treadwell
MARC T. TREADWELL, JUDGE
UNITED STATES DISTRICT COURT